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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re JULIAN G., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JULIAN G.,

Defendant and Appellant.

F077544

(Super. Ct. No. 15JL00176H)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Merced County. John
D. Kiriara, Judge.

Charles M. Bonneau III, under appointment by the Court of Appeal, for Defendant
and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and William
K. Kim, for Plaintiff and Respondent.

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* Before Franson, Acting P.J., Smith, J. and Snauffer, J.

INTRODUCTION

Appellant Julian G. contends the juvenile court abused its discretion when it committed him to the Department of Juvenile Justice (DJJ). He also contends the juvenile court erred in failing to set a maximum term of physical confinement. We affirm the commitment to the DJJ, but remand for the juvenile court to set the maximum term of physical confinement.

FACTUAL AND PROCEDURAL SUMMARY

On October 20, 2015, the Merced County District Attorney filed a Welfare and Institutions Code¹ section 602 petition. The petition alleged Julian had committed four felony offenses, robbery with a gang enhancement, robbery, active participation in a criminal street gang, and commercial burglary. It also alleged that Julian had committed the misdemeanor offense of resisting arrest. On November 13, 2015, Julian admitted the felony offenses of robbery with a criminal street gang enhancement and active participation in a criminal street gang.

At the December 31, 2015 disposition hearing, the juvenile court noted that Julian was 13 years old, the offenses were serious, his parents had “minimized the seriousness of the offense,” and Julian had acknowledged being an “active Dead End Norteño” who did not want to be housed with “Scraps.” The juvenile court adjudged Julian a ward of the juvenile court, placed him under the supervision of the probation officer in the home of his parents, and as a condition of probation, ordered Julian into the Bear Creek Academy (BCA) short term program level three.

On May 3, 2016, a notice of violation of probation was filed. The notice alleged that Julian had violated multiple conditions of probation by associating with other juveniles who were wards of the court, using marijuana, failing to attend school regularly,

¹ References to code sections are to the Welfare and Institutions Code unless otherwise specified.

being away from home overnight without permission, and failing to report to his probation officer. At the hearing on the violations, the juvenile court noted that Julian was now 14 years of age. It also was noted that Julian had been picked up while driving a stolen vehicle.

Julian admitted to eight violations of probation. The juvenile court placed Julian under the supervision of the probation department in the home of his father and ordered him placed in the BCA level three. The juvenile court also cautioned Julian that “you could end up going to” the DJJ.

On June 21, 2016, a second section 602 petition was filed against Julian alleging he had committed four felony offenses, unlawful taking of a vehicle with a criminal street gang enhancement, receiving a stolen motor vehicle, hit and run involving injury to another, and active participation in a criminal street gang. It also was alleged that he had been driving without a valid license, committed petty theft, and violated probation.

On July 6, 2016, Julian admitted to the felony offense of unlawful taking of a vehicle, misdemeanor active participation in a criminal street gang, and misdemeanor hit and run involving property damage. The court also found true a probation violation.

At the July 20, 2016 disposition hearing, the juvenile court noted that Julian was “smirking” and “nothing I say is getting to you.” The juvenile court wondered whether Julian wanted “to go to youth authority or prison as an adult.” Julian was continued as a ward of the juvenile court, placed under the supervision of the probation department, ordered to serve 33 days in juvenile hall as a condition of probation, and ordered to successfully complete the BCA long term program.

On November 7, 2016, the probation officer filed a notice of violation of probation. Julian admitted he violated probation by failing to follow the rules and regulations of the BCA. The juvenile court placed Julian back into the BCA long term program.

Another notice of violation of probation was filed on November 21, 2016. Julian again admitted to violating probation by failing to follow the rules and regulations of the BCA. The juvenile court placed Julian back into the BCA long term program.

On June 28, 2017, another notice of violation of probation was filed. This time, Julian failed to appear for the scheduled hearing and the juvenile court issued a bench warrant for his arrest. Julian was taken into custody on August 31, 2017.

An amended notice of violation of probation was filed on September 7, 2017. Julian was now 15 years of age. Julian admitted to violating probation and the juvenile court placed Julian back into the BCA long term program. The juvenile court noted that the maximum period of confinement on all offenses was 11 years four months.

A third section 602 petition was filed on September 20, 2017, alleging Julian had committed two felony offenses, active participation in a criminal street gang and felony assault by means of force likely to produce great bodily injury with a gang enhancement. It also alleged Julian had violated probation. Julian pled no contest to both felony offenses; the enhancement was dismissed. The juvenile court found the probation violation allegation true.

At the November 1, 2017 disposition hearing, the juvenile court informed Julian he was “very close to going to DJJ.” If Julian did not reform his behavior, his next placement would be at the DJJ. Julian was ordered to participate in and complete the youth treatment program at the BCA.

On February 8, 2018, a notice of violation of probation was filed. Julian was in possession of contraband, had received 32 incident reports while in the youth treatment program, and continuously refused to adhere to the rules and regulations of the program. On February 23, 2018, Julian admitted violating probation.

At the May 23, 2018 disposition hearing, the People noted that Julian had been a validated gang member for three years and was not “abandoning his gang ties.” Julian

had committed violent offenses and was regularly using alcohol and marijuana. The People opined that, “we have exhausted every single option” and there were no “local options left.”

The juvenile court noted that the DJJ had “positive programs” and provided an opportunity to learn a trade or vocation. The juvenile court noted Julian’s “long history here of getting into trouble, drifting into a gang lifestyle, becoming incarcerated, [and] not adjusting.” The juvenile court opined that Julian had a lack of control and engaged in sporadic violence.

The juvenile court opined that Julian could not be served “as well as could be” at the local level and the local programs could no longer “do Julian any good.” The juvenile court ordered Julian committed to the DJJ and stated, “I think his max term which is mostly academic, is five years because it’s a commitment on a [Penal Code section] 211.” The minute order states the maximum period of confinement is five years eight months. The order committing Julian to the DJJ states that the maximum term of imprisonment that could be imposed on an adult convicted of the same offense would be eight years eight months.²

Julian filed a notice of appeal on May 23, 2018.

DISCUSSION

Julian contends the juvenile court abused its discretion in committing him to the DJJ. We disagree. He also contends the juvenile court erred in failing to set a maximum term of physical confinement. We agree and remand.

I. DJJ Commitment

Section 202, subdivision (b) provides that minors “under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the

² This order in the record is not signed by the judicial officer.

interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances.” The minor’s rehabilitation and public safety are both important considerations in a juvenile disposition. (*In re J.W.* (2015) 236 Cal.App.4th 663, 667–668.)

“The purpose of juvenile delinquency laws is twofold: (1) to serve the ‘best interests’ of the delinquent ward by providing care, treatment, and guidance to rehabilitate the ward and ‘enable him or her to be a law-abiding and productive member of his or her family and the community,’ and (2) to ‘provide for the protection and safety of the public’ (§ 202, subs. (a), (b) & (d); [citations].)” (*In re Charles G.* (2004) 115 Cal.App.4th 608, 614–615.) “In determining the judgment and order to be made in any case in which the minor is found to be a person described in Section 602, the court shall consider, in addition to other relevant and material evidence, (1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor’s previous delinquent history.” (§ 725.5.)

The juvenile system is designed to give juvenile courts maximum flexibility in fashioning a disposition. (*In re Greg F.* (2012) 55 Cal.4th 393, 411–412.) A juvenile court’s commitment decision will be reversed only on a showing of abuse of discretion. “ ‘ “A reviewing court must indulge in all reasonable inferences to support the findings of the juvenile court” ’ ” (*In re Travis J.* (2013) 222 Cal.App.4th 187, 199.)

A DJJ commitment is not an abuse of discretion where the record demonstrates “both a probable benefit to the minor ... and the inappropriateness or ineffectiveness of less restrictive alternatives.” (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.)

In this case, less restrictive placements were tried repeatedly and failed to effect any change for the better in Julian’s behavior. In-home placement, juvenile hall,

probation, and various programs at BCA all failed to reform Julian. The only viable remaining placement was the DJJ.

No fewer than three section 602 petitions were filed against Julian, in addition to multiple violations of probation. Julian continued to engage in criminal activity that constituted felony offenses, including assault by force likely to produce great bodily injury. In addition, Julian continued to engage in gang activity, and use alcohol and drugs. The restrictive environment at the DJJ would provide for the protection and safety of the public and afford an opportunity for Julian to avail himself of the DJJ programs and reform his behavior, which no less restrictive alternative had accomplished. (*In re J.W.*, *supra*, 236 Cal.App.4th at pp. 667–668.)

The juvenile court did not abuse its discretion in committing Julian to the DJJ. (*In re Angela M.*, *supra*, 111 Cal.App.4th at p. 1397.)

II. Maximum term of Physical Confinement

Section 726, subdivision (d) provides that when a minor is removed from the physical custody of his or her parent or guardian, the juvenile court must specify the maximum period of confinement faced by the minor. This section also provides that the maximum period of confinement is the maximum term of imprisonment that could be imposed upon an adult if the adult were convicted of the same offense or offenses as the minor. (§ 726, subd. (d)(1).) The juvenile court may also aggregate the periods of confinement on multiple counts or multiple petitions. (§ 726, subd. (d)(3).)

If the juvenile court elects to aggregate the periods of confinement, the juvenile court is required to determine the maximum period of confinement as specified in Penal Code section 1170.1. (§ 726, subd. (d)(3).) Penal Code section 1170.1, subdivision (a) provides that when a defendant is convicted of two or more felonies, the trial court is required to impose a full sentence on the felony with the longest term of incarceration and one-third of the term for the remaining counts.

When a juvenile is committed to the DJJ, the juvenile court is required by section 731, subdivision (c) to set a maximum term of confinement appropriate to achieve rehabilitation; the maximum term shall not exceed the maximum term of imprisonment for an adult convicted of the same offenses.

Here, the juvenile court mentioned a possible five-year maximum term at the hearing; the minute order mentions a maximum term of five years eight months; and the unsigned commitment order states a maximum period of imprisonment of eight years eight months. The box on the DJJ commitment form, where the maximum period of confinement is to be specified, is left blank.

It is not clear from the record that the juvenile court addressed the maximum period of imprisonment pursuant to section 726, subdivision (d) at the May 23, 2018, disposition hearing; it appears the juvenile court was addressing only the maximum period of imprisonment for a single offense. The juvenile court failed to set the maximum period of confinement in the DJJ as required under section 731, subdivision (c).

Therefore, the matter will be remanded to the juvenile court to determine whether to aggregate the periods of confinement on the multiple petitions and multiple counts against Julian; to calculate the maximum period of imprisonment pursuant to section 726, subdivision (d), and to determine the maximum period of confinement in the DJJ pursuant to section 731, subdivision (c).

DISPOSITION

The May 23, 2018 order committing Julian to the Department of Juvenile Justice is affirmed. The matter is remanded for the limited purpose of having the juvenile court: (1) determine whether to aggregate the periods of confinement on the multiple petitions and multiple counts against Julian; (2) calculate the maximum period of imprisonment pursuant to Welfare and Institutions Code section 726, subdivision (d); and (3) determine

the maximum period of confinement pursuant to Welfare and Institutions Code section 731, subdivision (c).